IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1015 of 1990

with

CRIMINAL APPEAL No 1050 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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Criminal Appeal No. 1015 of 1990 :

VINA JETA - Appellant - Orig. Accused No.1
Versus
STATE OF GUJARAT - Respondent

Criminal Appeal No. 1050 of 1990 :

State of Gujarat - Appellant

versus

DIPA JETA - Respondent - Orig. Accused No.2
CHANDA BHUTNA - Respondent - Orig. Accused No.3
LUNBA PUNA - Respondent - Orig. Accused No.4

Appearance:
1. Criminal Appeal No. 1015 of 1990

MR G RAMAKRISHNAN for Appellant
MR KG SHETH, APP for Respondent - State

2. Criminal Appeal No. 1050 of 1990
MR KG SHETH, APP for Appellant - State
MR G RAMAKRISHNAN for Respondents

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 07/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI for the Court)

1. Both these appeals arise from the judgement and order dated 28th August 1990 passed by the learned Sessions Judge, Sabarkantha, at Himmatnagar in Sessions Case No. 17 of 1990, by which the accused No.1 was convicted of the offence under section 302 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for life and pay a fine of Rs.100=00, in default to undergo rigorous imprisonment for one month and the accused Nos. 2, 3 and 4 were given benefit of doubt and were acquitted of the charge under section 302 read with section 34 of the Indian Penal Code. Criminal Appeal No. 1015 of 1990 is preferred by the convicted accused No.1, while the Criminal Appeal No. 1050 of 1990 is preferred by the State against the acquittal of the original accused Nos. 2, 3 and 4.

2. The prosecution version briefly stated is that, in the village of Anjani, one Bai Betari was upset over a bullock of Manshi straying in her field and while Manshi was taking away his bullock, she cursed him that he will not see the coming Diwali day and as it so happened, he in fact did not see the next Diwali and died before that. In the belief that the death had occurred under the curse of Betari, the panchas of the village gathered and took action against Betari for giving such a curse and for imposing a fine of Rs.10,000=00, of which she initially paid Rs.2,000=00. The prosecution case is that the four

accused belonging to Betari's side got agitated over the imposition of fine and marched towards the house of Teja Dhira, who was a cousin of Manshi and responsible for imposition and recovery of fine, hurling abuses, whereupon, Teja Dhira came out of his house and while he was standing under a babul tree, the accused No.1 - Vana Jeta aimed his arrow and shot it towards him, which resulted in a piercing injury in his abdomen. At that time, the accused Nos. 2, 3 and 4 started pelting stones at Teja Dhira. This incident occurred around 6.30 p.m. on 29-11-1989. According to the prosecution, the complainant Hakma and Fata Soma had witnessed the incident. Teja was carried initially to Poshina Hospital, where the doctor did not at all respond and thence to Khedbrama. At Khedbrahma, he was asked to be taken to Himmatnagar. Even at Himmatnagar, the doctor did not treat Teja and asked him to be carried to Ahmedabad. He was admitted in the V.S. Hospital on 30-11-1989 and passed away on 1-12-1989. In the meantime, Hakma had lodged the complaint. According to the prosecution, Teja had himself pulled out the arrow from his body and given it to witness Fata Soma who had produced it before the police and it was on analysis found to be having blood stains of blood group `B', which was of the deceased.

3. In the Charge exh.3, it was alleged that the accused persons had, on 29-11-1989 at about 6.30 p.m., in furtherance of their common intention to cause death of Teja Dhira, had attacked him and the accused No.1 had shot an arrow at him at that time and the accused Nos. 2, 3 and 4 had pelted stones and thereby, they had intentionally caused his death and committed the offence under section 302 read with section 34 of the Indian Penal Code. They were also charged for the violation of the notification of the District Magistrate and thereby, committing an offence under section 135 of the Bombay Police Act.

4. The trial Court, on the basis of the evidence on record, came to a finding that the accused No.1, with an intention to cause death of Teja Dhira, caused him a piercing wound by an arrow darted by him, which was sufficient in the ordinary course of nature to cause death and thereby, committed an offence of murder punishable under section 302 of the Indian Penal Code. As regards the other three accused persons, the Court gave them benefit of doubt by holding that the prosecution version that they had pelted stones at Teja, was not supported by any medical evidence.

5. The learned counsel appearing for the accused persons in these two appeals contended that there was no evidence against the accused Nos. 2, 3 and 4 for connecting them with the crime and therefore, their acquittal was justified. He further argued that the conviction of the accused No.1 was not warranted, because, the prosecution has not been able to establish any motive on the part of the accused No.1 to commit the crime. It was also argued that it must be dark around 6.30 p.m. on the day of the incident, which was a wintery evening, and therefore, the so called eye witnesses could not have witnessed the incident. The learned counsel also argued that there was delay in giving medical treatment to Teja and death of Teja was caused not because of the injury due to the arrow darted by the accused No.1, but because of not being given adequate treatment in time.

6. The learned counsel appearing for the State contended that since all the four accused had come together hurling abuses and had attacked Teja when he came out of the house, the Court must infer that the accused Nos. 2, 3 and 4 shared the common intention of all the accused to cause death of Teja and therefore, the act of the accused No.1 in causing the fatal injury to Teja by shooting an arrow at Teja from his bow not only created liability of the accused No.1, but even of the accused Nos. 2, 3 and 4 who were liable for the said act as if it was done by them. The learned counsel submitted that the evidence of the eye witnesses was reliable and supported by medical evidence as well as the recovery of the bloodstained arrow with which the deceased was struck by the accused No.1.

7. We straightaway proceed to consider the deposition of Hakma who had filed the complaint exh.18. He has stated in his deposition exh.17 that he knew all the accused persons who belong to his village Anjani. He also knew Betariben. He has stated that the bullock of Manshi Juma had strayed into the field of Betari and when Manshi had entered into the field for taking his bullock away, Betari had abused him for getting her field grazed by his cattle and had given him a curse that he shall not live beyond the coming Diwali. Manshi died before the ensuing Diwali and therefore, his father had convened the panchas of the village. In that meeting, Betari was fined for having given a curse and after the fine was recovered, the obsequial rites of Manshi were performed. In the process of imposing fine, Teja had taken a part in imposition and recovery of fine and thereafter, he had gone home. A dinner was arranged and was attended by

this witness as well as by Fata Soma, Hasu Jama, Sanda Gopi, Narsa Soma, Dharma Soma, Dita Gopi and others. He has stated that Manshi and Teja were cousin brothers. When obsequial ceremony was performed, this witness had heard shouts of abuses and had seen these four accused persons coming from their house towards the place where the obsequial ceremony was being performed. He saw that these four accused persons had gone towards the house of Teja stating that Betari was wrongly fined. This witness saw that the accused No.1 was having a bow and an arrow in his hands. It was about 6.30 in the evening and Teja was standing under a babul tree near his house. When the accused No.1 saw Teja standing there, he aimed his arrow and shot him with it on the left side of his abdomen. The other accused persons were pelting stones at him. This witness was at that time standing near Teja. Teja pulled out the arrow from his body and gave it to Fata Soma, who had come near him by that time. The witness identified the muddamal arrow as the same arrow with which Teja was injured. Teja was required to be carried to the hospital, but they did not get the transport and one S.T. driver, who was requested to carry Teja at night, refused to do so. In the next morning, Teja was taken in the S.T. bus to Poshina Government Hospital, where the doctor refused to take his case and asked him to be taken elsewhere. This witness then went to the police station and lodged the FIR and Teja was taken to Khedbrahma. At Khedbrahma, he was asked to be taken to Himmatnagar. Even at Himmatnagar, they did not treat Teja and asked him to be carried to Ahmedabad. In Ahmedabad, he was admitted in the V.S. Hospital where he died on the next day. In his cross-examination, this witness has maintained his version and explained as to how it was not possible for Teja to be carried at night due to want of adequate transport. Poshina was 15 KMs away from Anjani, and, without transport, it was impossible to take Teja there on an uneven road. This witness has stated that the road from Anjani to Poshina was a `kachaa' road and has denied the suggestion that it was an asphalt road. He has denied that he was falsely implicating the accused persons. The version of this witness is fully corroborated by what he had stated in the FIR exh.18. From his deposition, it clearly transpires that the accused No.1 had, around 6.30 o'clock in the evening on 29-11-1989, shot an arrow from his bow at Teja Dhira and caused him a piercing wound, which ultimately resulted in his death.

8. The other eye witness Fatabhai Somabhai at exh.19 has given the same account of the prosecution version about Betari having cursed Manshi over his bullock

straying in her field, that he will not live beyond next Diwali, and that when he actually died before Diwali, his father convened panch which imposed a fine of Rs.10,000=00 on Betari, of which Rs.2,000=00 were paid and the panch allowed the obsequies of Manshi to be performed. A dinner was arranged in which this witness, members of the panch and many other persons were present. At that time, this witness saw that these four accused persons came giving abuses. There was twilight and this witness was able to see the accused persons and had identified them. The accused No.1 was having a bow and an arrow in his hands, while the others were having stones. They went towards the house of Teja. Teja had come out of his house, hearing the abuses and was standing near a babul tree. At that time, the arrow was shot at him which pierced his left abdomen. Teja himself pulled out the arrow and gave it to this witness. He was then taken to his house and made to sleep on a cot. Since the S.T. driver refused to take him to the hospital at night, Teja could not be taken. Next morning, he was shifted to the hospital at Poshina in the S.T. bus, but the doctor expressed his inability to treat him and therefore, he was taken to Khedbrahma. This witness did not go to Khedbrahma. He produced the arrow before the police while his statement was recorded. He denied the suggestion in his cross-examination that he had enmity against the uncle of the accused No.1. He denied the suggestion that the incident had taken place at 10.00 p.m. On the material aspects of the prosecution version, he has not at all shaken in his cross-examination and we find even from the deposition of this witness, that the accused No.1 had shot the arrow at Teja in the evening of 29-11-1989 and caused the penetrating wound in his abdomen, which resulted in his death.

9. The rustic simplicity of both the eye-witnesses is rightly appreciated by the learned trial Judge. Their version is corroborated by the medical evidence. Dr. Jayashree Kantilal Rao, in her deposition exh.25, has stated that she had performed the post mortem examination on Teja's body and on seeing muddamal article No.1 arrow, she stated that the injuries Nos. 1 and 2 (entry and exit) were possible with that weapon, and that the injury found on Teja was sufficient in the ordinary course of nature to cause his death. She has proved the post mortem report exh.27, in column 17 of which, the injuries found on the body of Teja were noted as under :

"[1] Stitched wound of 8 cm long in middle of

abdomen covered with 8 stitches. On removal of stitches, it was cavity deep.

[2] Stitched wound of 2 cm, 20 cm away from midline in left lumber region covered with 2 stitches. It was cavity deep.

[3] Stitched wound of 2 cm on right ankle - 2 stitches. It was muscle deep.

[4] Catheter drained."

9.1 The cause of death was extensive abdominal injury, which according to the medical expert could be caused by the muddamal arrow. It was the same arrow which was pulled out by Teja from his abdomen and handed over to witness Fata Soma who had produced the same before the police under a panchnama and which was forwarded for chemical analysis of the blood stains appearing thereon. As per the report of the chemical analyzer and the serologist exh.30, the muddamal article No.1 - arrow was stained with human blood and that blood was of `B' group, which was also the group of the deceased's blood, as per the analysis report of the blood stains found on the clothes recovered from his dead body.

10. We are of the view that the prosecution has, therefore, established beyond any shadow of doubt that the accused No.1 had caused the death of Teja Dhira by causing him a penetrating wound by shooting an arrow at him, which resulted in his death. The nature of the weapon and seat of injury clearly indicated the intention of the accused No.1 of causing death of Teja. The arrow was aimed at a vital part of the body, which caused an injury that was sufficient in the ordinary course of nature to cause his death as per the medical evidence. The contention of the learned counsel that the death was caused because of delay in giving adequate treatment to Teja is wholly misconceived, because, as provided in explanation 2 to section 299 of the Indian Penal Code, where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented. In view of the reliable evidence of eye witnesses and other supporting evidence, it is immaterial that a clear account of the motive behind the crime was not coming forth. The immediate motive that transpires from the evidence on record was that these accused persons were opposed to imposition of fine on Betari, and Teja, who

was instrumental to imposition and recovery of fine and was a cousin of Manshi, was targeted for the attack. The fact remains that the accused No.1 attacked Teja with his bow and arrow and intentionally caused an injury by his arrow, which resulted in the death of Teja.

11. The prosecution evidence as regards the involvement of the accused Nos. 2, 3 and 4 does not bring out participation by those accused persons in the commission of crime of murder. There are no injuries attributable to pelting of stones by these accused persons. The learned trial Judge has taken a view that the accused Nos. 2, 3 and 4 should be given benefit of doubt in absence of any corroborative evidence as regards their participation and it cannot be said that the view taken by the trial Court is improbable. Merely because a different view may be taken on the existing evidence, the appellate Court would not be justified in taking that view when the view taken by the trial Court would also be a possible view. We, therefore, do not propose to interfere in the finding of acquittal of the accused Nos. 2, 3 and 4 recorded by the trial Court and the acquittal appeal must fail.

12. The conviction of the accused No.1 is under section 302 of the Indian Penal Code, while the charge was a uniform one against all the four accused under section 302 read with section 34 of the Indian Penal Code. Even when there was no individual charge under section 302 of the Indian Penal Code, the contents of the charge clearly indicated that the accused No.1 was attributed the fatal blow given by him by darting an arrow at Teja. The entire trial has proceeded on that footing and no prejudice is caused to the accused No.1 by not framing a separate charge under section 302 of the IPC against him, and it has been clearly understood that he was being charged for having intentionally caused death of Teja by causing abdominal injury to him by his arrow. As held by the Supreme Court in Hem Raj v. The State (Delhi Administration), reported in AIR 1990 SC 2252, there is no illegality in convicting the appellant under section 302 (simpliciter) though there was a constructive charge against all the accused inclusive of the appellant under section 302 read with section 34 of the Indian Penal Code, since the evidence had disclosed that it was only the appellant who inflicted the injury which proved fatal. Similar view has also been taken by the Supreme Court in Kishore Chand v. State of H.P. reported in AIR 1990 SC 2140. In the present case also, the evidence reliably discloses that it was only the appellant - accused No.1, who had inflicted the injury,

which proved fatal, and in fact, the charge did contain the accusation that it was the accused No.1 who had darted the arrow at Teja causing him the fatal injury. The conviction of the accused No.1 for the offence under section 302 of the IPC therefore deserves to be upheld.

13. In the above view of the matter, we find ourselves in complete agreement with the reasoning and findings of the learned trial Judge and pass the following order :

:: O R D E R ::

Criminal Appeal No. 1015 of 1990 :

The appeal is dismissed.

Criminal Appeal No. 1050 of 1990 :

The acquittal appeal is dismissed. Bail bonds stand cancelled.

AUGUST 07, 2001 [R.K.ABICHANDANI, J.]

[SHARAD D. DAVE, J.]

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